

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document # 53

PRINCE, et al

-v-

CITY OF NEW YORK, et al

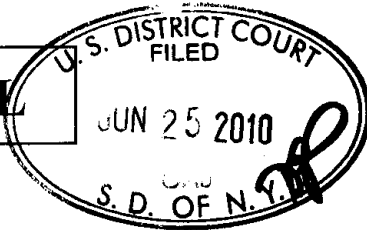
U.S.C.A. # _____

U.S.D.C. # 08 - cv - 5400

JUDGE : Laura Taylor Swain

DATE : JUNE 25, 2010

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME) : THOMAS R. PISARCZYK
FIRM : U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK
ADDRESS : 500 PEARL STREET, ROOM 370
NEW YORK, NEW YORK 10007
PHONE NO. : 1(212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES -----

DOCUMENT DESCRIPTION	DOC. #
CLERK'S CERTIFICATE	
SEE ATTACHED LIST OF NUMBERED DOCUMENTS	
** ONLY CIRCLED DOCUMENTS ARE INCLUDED **	
** ALL OTHERS MISSING AT THIS TIME **	

(√) ORIGINAL RECORD

The record in the above entitled case was indexed to the U.S.C.A
for the Second Circuit on the 25TH Day of June, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCE, et al

-v-

CITY OF NEW YORK, et al

U.S.C.A. # _____

U.S.D.C. # 08 - cv - 5400

JUDGE : Laura Taylor Swain

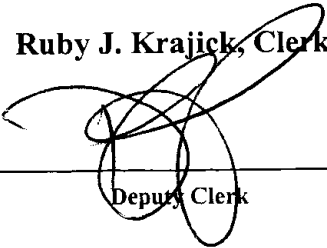
DATE : JUNE 25, 2010

CLERK’S CERTIFICATE

I, Ruby J. Krajick, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 through , inclusive, constitutes the Original Record On Appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
	CLERK’S CERTIFICATE
	SEE ATTACHED LIST OF NUMBERED DOCUMENTS
	** ONLY CIRCLED DOCUMENTS ARE INCLUDED **
	** ALL OTHERS MISSING AT THIS TIME **

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 25TH Day of June, In this year of our Lord, Two Thousand and Ten, and the Independence of the United States this 234TH year.

Ruby J. Krajick, Clerk
By  Deputy Clerk

APPEAL, CASREF, CLOSED, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-05400-LTS-DCF

Prince et al v. City of New York et al
Assigned to: Judge Laura Taylor Swain
Referred to: Magistrate Judge Debra C. Freeman
Cause: 28:1331 Fed. Question

Date Filed: 06/13/2008
Date Terminated: 05/10/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/13/2008	<u>1</u>	COMPLAINT against City of New York, Housing Preservation Development, Langston Hughes Preservation Corp, Sean Miller, Aja Becher, Joseph Fleming, Charles Mitchel. (Filing Fee \$ 350.00, Receipt Number 654046) Document filed by Michael Prince, Beverly Prince. (rdz) (Entered: 06/17/2008)
06/13/2008		SUMMONS ISSUED as to City of New York, Housing Preservation Development, Langston Hughes Preservation Corp, Sean Miller, Aja Becher, Joseph Fleming, Charles Mitchel. (rdz) (Entered: 06/17/2008)
06/13/2008		Magistrate Judge Debra Freeman is so designated. (rdz) (Entered: 06/17/2008)
06/23/2008	<u>2</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Debra C. Freeman. (Signed by Judge Laura Taylor Swain on 6/20/2008) (jfe) (Entered: 06/23/2008)
08/21/2008	<u>3</u>	SUMMONS RETURNED EXECUTED Summons and Complaint, served. Joseph Fleming served on 8/11/2008, answer due 9/2/2008. Service was accepted by Ms. Mynette, receptionist. Document filed by Michael Prince, Beverly Prince. (dle) (Entered: 08/22/2008)
08/21/2008	<u>4</u>	SUMMONS RETURNED EXECUTED Summons and Complaint, served as to New York City Fire Department. Service was accepted by receptionist. Document filed by Michael Prince, Beverly Prince. (dle) (Entered: 08/22/2008)
08/21/2008	<u>5</u>	SUMMONS RETURNED EXECUTED Summons and Complaint, served. Charles Mitchel served on 8/11/2008, answer due 9/2/2008. Service was accepted by receptionist. Document filed by Michael Prince, Beverly Prince. (dle) (Entered: 08/22/2008)
08/21/2008	<u>7</u>	SUMMONS RETURNED EXECUTED Summons and Complaint, served. Housing Preservation Development served on 8/11/2008, answer due 9/2/2008. Service was accepted by Receptionist. Document filed by Michael Prince, Beverly Prince. (dle) (Entered: 08/22/2008)
08/22/2008	<u>6</u>	SUMMONS RETURNED EXECUTED Summons and Complaint, served. City of New York served on 8/11/2008, answer due 9/2/2008. Service was accepted by Receptionist. Document filed by Michael Prince, Beverly Prince. (dle) (Entered: 08/22/2008)
09/05/2008	<u>8</u>	MOTION to Dismiss pursuant to Rule 12(b)(6) of the FRCP. Attached is Declaration in support of Jack Stoller. Document filed by Housing Preservation Development. (dj) (Entered: 09/08/2008)
09/05/2008	<u>9</u>	MEMORANDUM OF LAW in Support re: 8 MOTION to Dismiss. Document filed by City of New York, Housing Preservation Development. (dj) (Entered: 09/08/2008)
09/26/2008	<u>10</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. NO Corporate Parent. Document filed by Joseph Fleming. (Fleming, Joseph) (Entered: 09/26/2008)
09/26/2008	<u>11</u>	ANSWER to Complaint, COUNTERCLAIM against all plaintiffs. Document filed by Joseph Fleming. (Attachments: # 1 Exhibit Letter of Representation & Initial Retainer Statement, # 2 Exhibit Services & Disbursements Statements, # 3 Exhibit Return Check/Insufficient Funds, # 4 Exhibit Judgment of Possession)(Fleming, Joseph) (Entered: 09/26/2008)
09/26/2008	<u>12</u>	CERTIFICATE OF SERVICE of Answer and Counterclaim served on All Plaintiffs and Defendants on September 26, 2008. Service was made by Mail. Document filed by Joseph Fleming. (Fleming, Joseph) (Entered: 09/26/2008)
10/09/2008	<u>13</u>	LETTER addressed to Michael Prince, Beverly Prince and Jack Stoller from Magistrate Judge Debra C. Freeman dated 10/1/08 re: case management conference on 10/24/08 at 10:00 a.m. at 500 Pearl Street, NY, NY 10007 in Courtroom 17A. A joint report pursuant to Rule 26(f) of the FRCP to be submitted to chambers no later than 10/20/08. (dle) Modified on 10/10/2008 (dle). (Entered: 10/10/2008)
10/09/2008		Set/Reset Hearings: Case Management Conference set for 10/24/2008 at 10:00 AM in Courtroom 17A, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Debra C. Freeman. (dle) (Entered: 10/10/2008)
10/17/2008	<u>14</u>	Michael Prince's AFFIDAVIT of Rejoinder. Document filed by Michael Prince. (dj) (Entered: 10/20/2008)
10/17/2008	<u>15</u>	ORDER: It is hereby ordered that no later than October 23, 2008, defendants are directed (a) to serve a Rule 12.1 notice on plaintiffs, and (b) to file proof of service of both their motion and the Rule 12.1 notice. The parties shall appear for a scheduling conference before the Court on Friday, October 24, 2008, at 10:00 a.m., at the United States Courthouse, 500 Pearl Street, New York, New York, 10007, in Courtroom 17A. (Signed by Magistrate Judge Debra C. Freeman on 10/20/2008) Copies Mailed By Chambers. (jfe) Modified on 10/23/2008 (jfe). (Entered: 10/20/2008)
10/17/2008	<u>16</u>	AFFIDAVIT OF SERVICE of Summons and Complaint. Housing Preservation Development served on 10/10/2008, answer due 10/30/2008; Sean Miller served on 10/10/2008, answer due 10/30/2008. Service was accepted by Sean Miller. Document filed by Michael Prince, Beverly Prince. (dj) (Entered: 10/22/2008)
10/17/2008	<u>17</u>	AFFIDAVIT OF SERVICE of Summons and Complaint, Langston Hughes Preservation Corp served on 10/17/2008, answer due 11/6/2008; Aja Becher served on 10/17/2008, answer due 11/6/2008. Service was accepted by Aja Becher. Document filed by Michael Prince, Beverly Prince. (dj) (Entered: 10/22/2008)
10/24/2008	<u>18</u>	DECLARATION of Jack Stoller in Support re: 8 MOTION to Dismiss. Document filed by City of New York, Housing Preservation Development. (dle) (Entered: 10/27/2008)
10/24/2008	<u>19</u>	REPLY MEMORANDUM OF LAW in Support re: 8 MOTION to Dismiss. Document filed by City of New York, Housing Preservation Development. (dle) (Entered: 10/27/2008)

10/24/2008		Minute Entry for proceedings held before Magistrate Judge Debra C. Freeman: Case Management Conference held on 10/24/2008. No follow-up conf. (tro) (Entered: 10/31/2008)
10/31/2008	30	MOTION for Default Judgment purs to FRCP 55(a) against respondent Sean Miller, Aga Becher and the Langston Hughes House Corporation. Document filed by Michael Prince, Beverly Prince. (dj) (Entered: 11/24/2008)
11/03/2008	20	SCHEDULING ORDER Defendants the Law Office of Joseph Fleming and Mr. Mitchel, having each expressed a desire to file a motion to dismiss the Complaint, either pursuant to Rule 12 (b) or Rule 12(e) of the Federal Rules of Civil Procedure, shall serve and file their Rule 12 motions no later than November 24, 2008. Plaintiff shall serve and file his opposition to such motions no later than December 23, 2008. Defendants shall serve and file reply papers, if any, no later than January 16, 2009. Courtesy copies of all motion papers should be directed to the chambers of the Honorable Laura Taylor Swain, United States District Judge. Discovery in this action shall be stayed pending the outcome of Defendants motions to dismiss the complaint, or further Order of this Court. (Signed by Magistrate Judge Debra C. Freeman on 11/3/08) Copies Mailed By Chambers (mme) (Entered: 11/03/2008)
11/03/2008		***DELETED DOCUMENT. Deleted document number 21 SCHEDULING ORDER. The document was duplicated in this case. (jfe) (Entered: 11/24/2008)
11/17/2008	22	ORDER: The Court is in receipt of Pro Se Plaintiffs' October 27, 2008, application for a default judgment against Defendants Sean Miller, Aja Becher and Langston Hughes Preservation Corp. in the above-captioned action. Plaintiffs' application is denied without prejudice to renewal in compliance with Rule 2C of the undersigned's individual practice rules. So Ordered (Signed by Judge Laura Taylor Swain on 11/14/08) (js) (Entered: 11/17/2008)
11/24/2008	23	NOTICE OF APPEARANCE by Charles Leonard Mitchell on behalf of Charles Mitchel (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008	24	ANSWER to Complaint. Document filed by Charles Mitchel (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008	25	FILING ERROR - ELECTRONIC FILING IN NON-ECF CASE - FIRST MOTION to Dismiss <i>for failure to state a claim upon which relief can be granted</i> . Document filed by Charles Mitchel. Responses due by 12/23/2008 Return Date set for 12/23/2008 at 05:00 PM. (Mitchell, Charles) Modified on 11/25/2008 (db). (Entered: 11/24/2008)
11/24/2008	26	DECLARATION of Charles Mitchell re: 23 Notice of Appearance, 24 Answer to Complaint, 25 FIRST MOTION to Dismiss <i>for failure to state a claim upon which relief can be granted</i> . Declaration. Document filed by Charles Mitchell. (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008	27	MEMORANDUM OF LAW in Support re: 23 Notice of Appearance, 24 Answer to Complaint, 26 Declaration, 25 FIRST MOTION to Dismiss <i>for failure to state a claim upon which relief can be granted</i> . Document filed by Charles Mitchell. (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008	28	AFFIDAVIT OF SERVICE of notice of appearance, notice of motion, motion to dismiss, declaration, memorandum of law in support of motion to dismiss, affirmation of service served on Beverly Prince, Michael Prince, City of New York Housing Preservation Development and Fire Department, Law Office of Joseph Fleming, Sean Miller, Aja Becher on 11/24/08. Service was made by Mail. Document filed by Charles Mitchell. (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008	29	NOTICE of Motion of Charles Mitchell To Dismiss The Complaint for Failure To State A Claim Upon Which Relief May Be Granted re: 23 Notice of Appearance, 27 Memorandum of Law in Support, 28 Affidavit of Service Other, 24 Answer to Complaint, 26 Declaration, 25 FIRST MOTION to Dismiss <i>for failure to state a claim upon which relief can be granted</i> . Document filed by Charles Mitchell. (Mitchell, Charles) (Entered: 11/24/2008)
11/24/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF CASE ERROR. Note to Attorney Charles Leonard Mitchell to MANUALLY RE-FILE Document Motion to Dismiss, Document No. 25. This case is not ECF. (db) (Entered: 11/25/2008)
12/01/2008	31	MOTION for Default Judgment Pursuant to FRCP 55(a). Document filed by Michael Prince, Beverly Prince. (db) (Entered: 12/02/2008)
12/02/2008	32	NOTICE OF APPEARANCE by Charles Leonard Mitchell on behalf of Charles Mitchel (dj) (Entered: 12/04/2008)
12/02/2008	33	Notice of Motion of Charles Mitchell to Dismiss the Complaint for failure to state a claim upon which relief may be granted. (dj) (Entered: 12/04/2008)
12/02/2008	34	NOTICE of Motion of Charles Mitchell to Dismiss the complaint. (dj) (Entered: 12/04/2008)
12/02/2008	35	DECLARATION of Charles Leonard Mitchell. Document filed by Charles Mitchell. (dj) (Entered: 12/04/2008)
12/12/2008	38	Notice of Response in Opposition of Summary Judgment. Document filed by Michael Prince, Beverly Prince. (dj) (Entered: 12/19/2008)
12/17/2008	36	MEMO ENDORSEMENT re: PLAINTIFFS' NOTICE OF MOTION FOR SANCTIONS PURSUANT TO FED. R 37(d) CIV. P., ENDORSEMENT: The within motion for sanctions or alternatively, for discovery is denied. Discovery remains stayed pending a decision of the Court on the motions to dismiss that have been filed as Dkt. 8 and Dkt. 29. (see also Dkt 33,34) As it appears that plaintiffs may not have received a copy of the motion papers filed by defendant Charles Mitchell, defendant Mitchell is directed to re-serve those papers on plaintiffs by 12/19/08. If plaintiffs then need an extension of time to respond to the motion, plaintiffs should make such a request to the Court in writing. (Signed by Magistrate Judge Debra C. Freeman on 12/16/08) (pl) (Entered: 12/17/2008)
12/17/2008	37	ORDER The Court is in receipt of Pro Se Plaintiffs' second application for a default judgment against Defendants Sean Miller, Aja Becher and Langston Hughes Preservation Corp. in the above captioned action, dated October 27, 2008 and docketed as entry no. 31. Plaintiffs' application is denied without prejudice to renewal with evidence of proper service of the motion on those parties against whom Plaintiffs' seek a default judgment. The Clerk of Court is respectfully requested to terminate docket entry no. 31, as well as docket entry no 30, which was resolved by the undersigned's November 14, 2008, Order. (Signed by Judge Laura Taylor Swain on 12/16/08) Copies Mailed By Chambers. (mme) (Entered: 12/17/2008)
01/05/2009	39	LETTER addressed to Clerk of Court J. Michael McMahon from Charles L. Mitchell dated 12/19/08 re: Defendant Charles Mitchell waives the right to reply to the Plaintiff's response to the motion of Charles Mitchell to Dismiss the Complaint. Document filed by Charles Mitchell. (tro) (Entered: 01/05/2009)
01/28/2009	40	ENDORSED LETTER addressed to Magistrate Judge Debra C. Freeman from Jack Stoller dated 1/21/09 re: Counsel requests writes this letter in the hope of obtaining a resolution without having to make a motion to quash the subpoena, perhaps by a conference called by the Court or by any other means which the Court deems to be appropriate. ENDORSEMENT: As discovery in this matter is currently stayed, The City need not respond to this subpoena at this time. If the discovery stay is at some point lifted by the Court, the Court will, at that time, consider whether the documents identified in Plaintiffs subpoena should be produced. Plaintiff is instructed that the stay of discovery in this action extends to both party and non-party discovery, and plaintiff is accordingly directed to refrain from serving subpoena in connection with this action, pending further order of the Court. (Signed by Magistrate Judge Debra C. Freeman on 1/28/09) (mme) Modified on 2/5/2009 (mme). (Entered: 01/28/2009)
09/02/2009	41	ORDER TO SHOW CAUSE Plaintiffs in the above-captioned action are hereby ordered to show cause, by way of a memorandum of law of no more than 10 pages in length, filed with the Court (with a courtesy copy for Chambers) and served on counsel so as to be received by September 30, 2009, why Plaintiffs' federal claims ought not be dismissed as against all remaining Defendants for the reasons stated in the Court's Memorandum Opinion and Order dated September 2, 2009, and why the Court should not decline to exercise supplemental jurisdiction over any remaining state law claims. SO ORDERED. (Signed by Judge Laura Taylor Swain on 9/2/2009) Copies Mailed/Faxed By Chambers (jmi) (Entered: 09/02/2009)

09/02/2009	<u>42</u>	MEMORANDUM OPINION AND ORDER #97989 For the foregoing reasons, the motions to dismiss filed by the Municipal Defendants and by Defendant Mitchell are granted and Plaintiffs' Section 1983 claim is dismissed as against those Defendants. This Opinion resolves docket entry nos. 8 and 33. The Court is also issuing today a separate Order to Show Cause in this matter. SO ORDERED. (Signed by Judge Laura Taylor Swain on 9/2/2009) (jmi) Modified on 9/8/2009 (eef). (Entered: 09/02/2009)
09/14/2009		Received returned mail Mail was addressed to Joesph Fleming ESQ 45 John St, STE 205 New York, New York 10038 and was returned for the following reason(s): Not Deliverable As Addressed. (jab) (Entered: 09/14/2009)
12/30/2009	<u>44</u>	MANDATE of USCA (Certified Copy) USCA Case Number 09-3566-op. Petitioner, pro se, has filed a petition for a writ of mandamus and moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion for leave to proceed in forma pauperis is GRANTED for the purpose of filing the mandamus petition. It is further ORDERED that the mandamus petition is DENIED because Petitioner has not demonstrated that exceptional circumstances warrant the requested relief. See In re von Bulow, 828 F.2d 94, 96 (2d Cir. 1987). Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 12/29/2009. (nd) (Entered: 12/30/2009)
12/30/2009		Transmission of USCA Mandate/Order to the District Judge re: 44 USCA Mandate,, (nd) (Entered: 12/30/2009)
04/29/2010	<u>45</u>	MOTION (Petition) to Compel Discovery. Document filed by Michael Prince (mbe) (Entered: 04/30/2010)
05/04/2010	<u>46</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT (LETTER) - RESPONSE in Opposition re: <u>45</u> MOTION to Compel. <i>Letter to Court, cc to parties</i> . Document filed by City of New York. (Stoller, Jack) Modified on 5/5/2010 (jar). (Entered: 05/04/2010)
05/04/2010	<u>47</u>	NOTICE OF APPEARANCE by Jack Stoller on behalf of City of New York (Stoller, Jack) (Entered: 05/04/2010)
05/05/2010		***NOTE TO ATTORNEY THAT THE ATTEMPTED FILING OF Document No. 46 HAS BEEN REJECTED. Note to Attorney Jack Stoller : THE CLERK'S OFFICE DOES NOT ACCEPT LETTERS FOR FILING, either through ECF or otherwise, except where the judge has ordered that a particular letter be docketed. Letters may be sent directly to a judge. (jar) (Entered: 05/05/2010)
05/05/2010	<u>48</u>	ORDER, that because Plaintiffs' Affidavit fails to show cause as to why, in light of this Court's September 2, 2009, Memorandum Opinion and Order, their federal claims ought not be dismissed as against all remaining Defendants, all remaining federal claims in the above-captioned matter are hereby dismissed, and the Court declines to exercise jurisdiction of Plaintiffs' state law claims. See 28 U.S.C. § 1367(c)(3). The Clerk of Court is respectfully requested to terminate all pending motions, close this case, and enter judgment in Defendants' favor dismissing Plaintiffs' federal claims with prejudice and declining to exercise jurisdiction of Plaintiffs' state law claims. (Signed by Judge Laura Taylor Swain on 5/5/10) (pl) (Entered: 05/05/2010)
05/05/2010		Transmission to Judgments and Orders Clerk. Transmitted re: 48 Order on Motion to Compel, to the Judgments and Orders Clerk. (pl) (Entered: 05/05/2010)
05/10/2010	<u>49</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Order dated May 5, 2010, judgment is entered in defendants' favor dismissing plaintiffs' federal claims with prejudice and declining to exercise jurisdiction of plaintiffs' state law claims; accordingly, all pending motions are terminated and the case is closed. (Signed by Clerk of Court Ruby Krajick on 5/10/10) (Attachments: # <u>1</u> notice of right to appeal)(ml) (Entered: 05/10/2010)
05/10/2010		Mailed notice of Right to Appeal re: 49 Clerk's Judgment, to Pro Se Litigant(s): Michael Prince, Beverly Prince, Joseph Fleming, Charles Mitchel and to Attorney(s) of Record: Michael A. Cardozo, Jack Stoller. (ajc) (Entered: 05/11/2010)
05/14/2010	<u>50</u>	REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL. Document filed by Michael Prince.(rmj) (Entered: 05/17/2010)
05/14/2010	<u>52</u>	NOTICE OF APPEAL from 48 Order on Motion to Compel, 49 Clerk's Judgment. Document filed by Michael Prince. (tp) (Entered: 06/16/2010)
05/14/2010		Appeal Remark as to <u>52</u> Notice of Appeal filed by Michael Prince. \$455.00 APPEAL FEE DUE IFP DENIED 5/28/10. (tp) (Entered: 06/16/2010)
05/19/2010		Received returned mail Mail was addressed to Joseph Fleming of Joseph Fleming Esq., P.C. at 45 John Street, Suite 205, New York, N.Y. 10038 and was returned for the following reason(s): Not Deliverable as Addressed. (ajc) (Entered: 05/19/2010)
06/08/2010	<u>51</u>	ENDORSEMENT on Request [Doc No. 50] to Proceed In Forma Pauperis on Appeal, I.F.P. REQUEST IS DENIED. (Signed by Judge Laura Taylor Swain on 05/28/10) (rmj) (Entered: 06/09/2010)
06/16/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>52</u> Notice of Appeal. (tp) (Entered: 06/16/2010)
06/16/2010		Transmission of Notice of Appeal to the District Judge re: <u>52</u> Notice of Appeal. (tp) (Entered: 06/16/2010)